

TAB 1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: COLUMBIA UNIVERSITY)
PATENT LITIGATION) MDL NO. 1592
)
)

SCHEDULING ORDER

This case is governed procedurally by the 1992 Amendments to the Local Rules of the United States District Court for the District of Massachusetts (the “Local Rules”), which implement the District’s Civil Justice Expense and Delay Reduction Plan. Counsel must, therefore, comply with the relevant Local Rules in the litigation of this case.

It is hereby ORDERED pursuant to Fed. R. Civ. P. 16(b) and Local Rule 16(f) that:

[] 1. _____ shall respond to the Complaint by _____. *Notwithstanding the foregoing, Columbia shall have until July 8, 2004 to respond to Genentech’s Second Amended Complaint.*

Plaintiffs’ Proposed Dates	Columbia’s Proposed Dates
Aug. 6, 2004	Same

☐ 2. Any proposed party who has not yet been served shall be served by _____. Counsel shall within 14 days thereafter file a return of service or a statement that service has not been accomplished and that the claims against the previously named proposed party shall be dismissed without prejudice.

☐ 3. **[Plaintiffs' proposal]**¹ *Motions to amend the pleadings shall be filed by _____, unless the amendment is based on newly-discovered evidence, and responses shall be filed if amendments are allowed as required by the applicable provisions of the Federal Rules of Civil Procedure. However, this shall not affect Columbia's right to amend its answer in Johnson & Johnson v. Trustees of Columbia University, No. 03-CV-8811 (S.D.N.Y.), as agreed on by the parties to that case.*

☐ 3. **[Columbia's proposal]**¹ Amendments to the pleadings, or any additional pleading, shall be filed by _____, and responses shall be filed as required by the applicable provisions of the Federal Rule of Civil Procedure.

☐ 4. The parties shall by _____ make the automatic document disclosure required by Local Rule 26.2(A) and, if applicable, disclose the information required by Local Rule 35.1.

☐ 5. The parties shall by _____ make the disclosure authorized by Local Rule 26.1 (B) (1) and (2).

☐ 6. All dispositive motions except motions for summary judgment shall be filed by _____ and responses shall be filed fourteen days thereafter pursuant to Local Rule 7.1.

☐ 7. **[Plaintiffs' proposal]** Discovery shall initially be limited to common issues and shall be complete by _____.

Aug. 6, 2004	Same
Aug. 6, 2004	
	Aug. 6, 2004
July 22, 2004	Same
N/A	Agree
Sept. 3, 2004	Same
Feb. 18, 2005	

¹ The parties are not in agreement concerning the meaning of Paragraph 3 of the Court's standard Scheduling Order. Plaintiffs understand the paragraph to provide a date by which motions to amend the pleadings must be filed. Accordingly, in view of the dispute, plaintiffs propose modifying that paragraph to make this more explicit. Columbia understands the standard language to mean that until the specified date, pleadings may be amended *as of right*, without filing a motion for leave. In a conference on June 12, 2004, the parties agreed to submit this matter to the Court for clarification.

☐ 7. **[Columbia's proposal]** *All fact discovery shall be completed by:*

Initial document requests shall be served by:

Motions for Protective Order (or agreed upon protective order) shall be submitted by:

Initial round of document production shall be concluded by:

☐ 8. Counsel for the parties shall meet at least once to explore the possibility of settlement and report to the court by _____ the status and prospects for settlement. If the case is not settled, the parties shall report whether they wish to participate in mediation to be conducted by Senior Judge David A. Mazzone or a member of the panel.

☐ 9. A settlement conference, which must be attended by trial counsel with full settlement authority or with their clients, shall be held on _____, at _____.

☐ 10. A status and case management conference will be held by Magistrate Judge _____ on a date to be scheduled by him in _____.

Plaintiffs' proposed schedule for expert discovery, claim construction, and summary judgment motions:

☐ 11. *All parties shall by _____ designate experts and disclose the information described in Fed. R. Civ. P. 26(a)(2) concerning each expert.*

Responsive expert reports shall be due on:

The parties shall exchange letters identifying the claims terms they believe to be in dispute by:

	May 30, 2005
June 29, 2004	Same
July 8, 2004	Same
Aug. 23, 2004	Same
Feb. 22, 2005	Same
All plaintiffs individually with Columbia by Feb. 28, 2005	Same
	Nov. 2004
Plaintiffs' proposed schedule for expert discovery, claim construction, and summary judgment motions:	
Dec. 1, 2004	
Jan. 7, 2005	
Jan. 14, 2005	

The parties shall meet and confer concerning potentially disputed claim terms on:

Jan. 24, 2005	
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The parties shall exchange claim charts for the '017, '216, '665, and '275 patents on:

Feb. 11, 2005	
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Opening Markman briefs shall be filed on, and dispositive motion opening briefs shall be filed no later than:

March 22, 2005	
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Responsive Markman and/or dispositive motion briefs shall be filed on:

April 12, 2005	
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Reply briefs on dispositive motions filed on March 22, 2005 shall be filed on:

April 26, 2005	
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Columbia's proposed schedule for expert discovery, claim construction, and summary judgment motions

Columbia shall disclose its initial infringement contentions, and identify the evidence that supports these contentions. Plaintiffs shall disclose their initial invalidity and unenforceability contentions, and identify the evidence that supports these contentions.

	Aug. 23, 2004
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The parties shall exchange letters identifying the claim terms they believe require construction by the Court:

	Oct. 4, 2004
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The parties shall exchange claim charts and make a preliminary identification of the extrinsic evidence they will rely on to construe the claims (including witness testimony) on:

	Nov. 8, 2004.
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The parties shall meet and confer concerning potentially disputed claim terms on:

	Nov. 15, 2004.
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The parties shall file with the court a statement: (1) listing the construction of the claim terms on which they agree; (2) each party's proposed construction, as well as all extrinsic evidence each party intends to rely on to support or oppose a given claim construction; (3) an identification of each witness each party intends to call in the claim construction hearing. No further supplementation of claim construction disclosures will be allowed except with leave of the court.

	Dec. 15, 2004.
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Opening claim construction briefs shall be filed on:

Responsive claim construction briefs shall be filed on:

☐ 11. For each subject on which a party has the burden at trial, the party shall by _____ designate experts and disclose the information described in Fed. R. Civ. P. 26(a)(2), concerning each expert.

Responsive expert reports shall be due on:

☐ 12. All expert discovery shall be complete by _____.

Trial Scheduling

☐ 13. Counsel for the parties shall confer and, by _____, file a report as to the prospects for settlement and whether either party feels there is a proper basis for filing a motion for summary judgment.

☐ 14. A scheduling conference will be held on _____ at _____ and must be attended by trial counsel with full settlement authority or with their client(s). If appropriate, a schedule for filing motions for summary judgment will be established at this conference.

☐ 15. A final pretrial conference will be held on _____ at _____ and must be attended by trial counsel with full settlement authority or with their client(s). Counsel shall be prepared to commence trial as of the date of the final pretrial conference.

☐ 16. Trial shall commence on _____.

☐ 17. This case is hereby referred to Magistrate Judge _____ for all pretrial proceedings, including reports and recommendations concerning any dispositive motions.

	Jan. 18, 2005.
	Feb. 15, 2005
	April 1, 2005.
	May 2, 2005.
	June 15, 2005.
N/A	Agree
N/A	See above
N/A	Agree
N/A	Agree
N/A	Agree

All provisions and deadlines contained in this Order having been established with the participation of the parties to this case, any requests for modification must be presented to the judge or magistrate judge, if referred for case management proceedings. Any requests for extension will be granted only for good cause shown supported by affidavits, other evidentiary materials, or reference to pertinent portions of the record. The request shall be made by motion and shall contain the reasons for the request, a summary of the discovery which remains to be taken, and a date certain when the requesting party will complete the additional discovery.

Counsel are encouraged to seek an early resolution of this matter. Additional case management conferences may be scheduled by the Court or upon the request of counsel.

By the Court,

DENNIS P. O'LEARY

Date

Deputy Clerk